



UNITED STATES PATENT AND TRADEMARK OFFICE

25

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,149	01/15/2002	Edgar Circenis	10016873-1	8859

7590 06/02/2006
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

WU, RUTAO

ART UNIT	PAPER NUMBER
----------	--------------

3639

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/045,149	CIRCENIS ET AL.	
	Examiner	Art Unit	
	Rutao Wu	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. In response filed on March 22, 2006, the applicants cancelled claims 1-32 and new claims 33-65 have been introduced. Claims 33-65 are currently pending.

Response to Arguments

2. Applicants' arguments filed March 22, 2006 have been fully considered but they are not persuasive.
3. The applicants cancelled claims 1-32 and introduced claims 33-65 and argues that U.S. Pub No. 2002/0083003 to Halliday et al (Halliday) does not teach applicants' invention as claims. Specifically, as per claim 33, the applicants states that "*Halliday does not disclose or suggest a software pay-per-use (PPU) system including a metrics gathering tool, a software metering agent, a utility metering appliance, and a usage collection and billing system. The metrics gathering tool, for monitoring and measuring usage data, is associated with each of the one or more PPU software products on a first computer. The software metering agent collects the measured usage data from each metrics gathering tool and for all of the one or more PPU software products registered with the software metering agent on the first computer. The utility metering appliance is connected to a plurality of computers, including a first computer, through a network. The utility metering appliance receives the collected usage data from the software metering agent residing on the first computer and other software metering agents*

residing on other computers connected to the utility metering appliance through the network. The usage collection and billing system periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU software products on the plurality of computers connected to the utility metering appliance through the network." (Page 9 and 10 of the response) The Examiner respectfully disagrees.

Halliday discloses all software usage is automatically controlled and metered on the client system and the metered usage is reported to a metering server located in a host site (or a plurality of sites) where the software usage is accounted for and charged. [0053]

Halliday teaches "*a first computer having one or more PPU software products*" by disclosing a system is provided whereby a user may execute any number of software applications by downloading or otherwise obtaining a software package from one or a plurality of software proprietors for use on his own client computer. [0053]

Halliday teaches "*a metrics gathering tool*" by disclosing the user will load from a data storage medium, or download from a proprietor's website to his local computer, one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. [0056] Here the application library is part of every software package that is obtained by the user and meters and sends the usage information to the metering monitor, which is

Art Unit: 3639

also part of the software package. Therefore, the application library teaches "*a metrics gathering tool*"

Halliday teaches "*a software metering agent*" by disclosing the user will load from a data storage medium, or download from a proprietor's website to his local computer, one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. The metering monitor may also act as a proxy server, accumulating metering information and forwarding the information as a batch to the central server at periodic intervals set by the server. [0056] Therefore, the metering monitor teaches "*a software metering agent*"

Halliday teaches "*a utility metering appliance*" by disclosing a metering server that is a computer program connected to a set of metering monitors via a communications link. The metering server is responsible for collating tool usage information and applying this collated information in the form of credit deductions from client users' credit pool. [0051]

Halliday teaches "*a usage collection and billing system*" by disclosing on the metering server, usage reports are compared to a tariff sheet for the user and the account credit value is reduced by an amount as determined by the rate and length of use of a feature. Alternatively, charges could be accumulated and billed to the user. [0058]

As per claim 52, the applicants argue that Halliday does not disclose or suggest a computer implemented method for generating a bill for using a PPU software program. The Examiner respectfully disagrees. Halliday discloses that the metering server, a computer program, can accumulate charges and bill the user. [0051] and [0058]

As per claim 59, the applicants argue that Halliday does not teach a computer readable storage medium containing instructions implementing features recited in independent claim 52. The Examiner respectfully disagrees. Halliday discloses the metering server is a computer program that can accumulate charges and bill the user. It is therefore inherent that a computer readable storage medium is present in the invention. A computer program must be stored or saved on a computer readable medium, otherwise the computer program is unable to function.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 33-46, 48-65 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pub No. 2002/0083003 to Halliday et al.

Referring to claim 33:

A software pay-per-use (PPU) system comprising:

A first computer having one or more PPU software products; [0053]

A metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPU software products; [0056]

A software metering agent residing on the first computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer; [0056]

A utility metering appliance connected to a plurality of computers, including the first computer, through a network, wherein the utility metering appliance receives the collected usage data from the software metering agent residing on the first computer and other software metering agents residing on other computers connected to the utility metering appliance through the network; and [0051]

A usage collection and billing system, wherein the usage collection and billing system periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU software products on the plurality of computers connected to the utility metering appliance through the network. [0058]

Referring to claim 34:

Art Unit: 3639

The system of claim 33, further comprising:

A registry for identifying all of the one or more PPU software products registered with the software metering agent on the first computer, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products. [0056], [0068]

Referring to claim 35:

The system of claim 33, wherein the software metering agent reads the pathname in the registry to access the associated metric gathering tool and collect the measured usage data [0062]

Referring to claim 36:

The system of claim 33, wherein the software metering agent collects measured usage data from a plurality of metrics gathering tools. [0068], [0069]

Referring to claim 37:

The system of claim 33, wherein the utility metering appliance is located on a standalone computer on the network. [0051], [0053]

Referring to claim 38:

The system of claim 37, wherein the utility metering appliance is a software program residing on each of the plurality of computers. [0051], [0052]

Referring to claim 39:

The system of claim 33, wherein the metrics gathering tool is an executable script incorporated within the associated PPU software product. [0056]

Referring to claim 40:

The system of claim 3, wherein the software metering agent is periodically polled by the utility metering appliance. [0056]

Referring to claim 41:

The system of claim 33, wherein the usage collecting and billing system further comprises:

A billing computer, wherein the billing computer receives the collected usage data from the utility metering appliance and provides a bill to customers of the system based on generated billing information. [0058]

Referring to claim 42:

The system of claim 41, wherein the usage collecting and billing system provides a web portal, accessible by customers, that displays the billing information. [0064]

Referring to claim 43:

The system of claim 41, wherein the usage collecting and billing system provides a web portal, accessible by customers, that displays the collected usage data. [0064], [0066]

Referring to claim 44:

The system of claim 33, wherein the usage data includes cumulative usage data accumulated over a given time period or snapshot data. [0064]

Referring to claim 45:

The system of claim 33, wherein the usage data includes a number of input/output(I/O) transactions processed in a given time period. [0064]

Referring to claim 46:

The system of claim 33, wherein the usage data associated with the one or more of the PPU software products is based on one or more of the following: number of users of the system, number of users of a given type, software license level, number of transactions processed per minute, total number of transactions processed, number of files created, sizes of files created, number of keystrokes processed, number of times a specific software product feature has been accessed and number of computers on the system using one or more of the PPU software products. [0064]

Referring to claim 48:

The system of claim 33, further comprising:

A second computer, from the plurality of computers, having one or more PPU software products; (Fig 1), [0060]

A metrics gathering tool associated with each of the one or more PPU software products on the second computer, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPU software products on the second computer; and [0056]

A software metering agent residing on the second computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products registered with the software metering agent on the second computer, and wherein the software metering agent residing on the second computer is connected to the utility metering appliance through the network

and the utility metering appliance receives the collected usage data associated with the second computer from the software metering agent residing on the second computer.

[0056]

Referring to claim 49:

The system of claim 48, the usage collection and billing system periodically receives the collected usage data associated with the second computer from the utility metering appliance and processes the collected usage data associated with the second computer to generate billing information for PPU software products on the second computer. [0056], [0058]

Referring to claim 50:

The system of claim 33, wherein the software metering agent collects measured usage data from a plurality of metric gathering tools in the first computer and transmits the collected usage data from the plurality of metric gathering tools to the utility metering appliance. [0071]

Referring to claim 51:

The system of claim 50, wherein the utility metering appliance receives the collected usage data from a plurality of software metering agents residing on the plurality of computers and transmits the collected usage data from the plurality of software metering agents to the usage collection and billing system. [0051]

Referring to claims 52 and 59:

A computer implemented method for generating a bill for using a pay-per-use (PPU) software product, the method comprising:

Measuring usage data associated with one or more PPU software products using a metrics gathering tool at a first computer having one or more PPU software products, wherein one metrics gathering tool is associated with each of the one or more PPU software products; [0056]

Collecting the measured usage data from each metrics gathering tool associated with each of the one or more PPU software products using a software metering agent, wherein the software metering agent collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer. [0056]

Receiving the collected usage data from the software metering agent residing on the first computer and from a plurality of other software metering agents residing on a plurality of computers, wherein the collected usage data is collected at a utility metering appliance connected to the plurality of computers, including the first computer, through a network; [0051]

Processing the collected usage data from each metrics gathering tool associated with each of the one or more PPU software products on the first computer received from the utility metering appliance; and [0058]

Generating the bill for using the one or more PPU software products on the first computer based on the processed collected usage data from the first computer. [0058]

Referring to claims 53 and 60:

The method of claim 52, further comprising:

Identifying all of the one or more PPU software products registered with the software metering agent on the first computer by a registry, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products. [0056], [0068]

Referring to claims 54 and 61:

The method of claim 53, further comprising:

Reading the pathname in the registry to access the metrics gathering tool associated with the PPU software product; and
collecting the measured usage data associated with the PPU software product.
[0062]

Referring to claims 55 and 62:

The method of claim 52, further comprising:

Collecting the measured usage data from a plurality of metrics gathering tools.
[0068], [0069]

Referring to claims 56 and 63:

The method of claim 52, further comprising:

Periodically polling the software metering agent by the utility metering appliance to retrieve the measured usage data. [0056]

Referring to claims 57 and 64:

The method of claim 52, further comprising:

Measuring usage data associated one or more PPU software products on a second computer using metrics gathering tools on the second computer, wherein a metrics gathering tool is associated with each of the one or more PPU software products; and [0060], [0056]

Collecting the measured usage data from each metrics gathering tool associated with each of the one or more PPU software products as a software metering agent on the second computer and from all of the one or more PPU software products registered with the software metering agent on the second computer, wherein the software metering agent residing on the second computer is connected to the utility metering appliance through the network and the utility metering appliance receives the collected usage data associated with the second computer from the software metering agent residing on the second computer. [0056]

Referring to claims 58 and 65:

The method of claim 57, further comprising:

Processing the collected usage data from each metrics gathering tool associated with each of the one or more PPU software products on the second computer received from the utility metering appliance; and [0058]

Generating the bill for using the one or more PPU software products on the second computer based on the processed collected usage data from the second computer. [0058]

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday et al.

Referring to claim 47:

Halliday discloses that the metering server is connected to a set of metering monitors via a communications link. [0051] Halliday does not expressly disclose that the communications link is one or more of a Simple Network Management Protocol, Web-Based Enterprise Management Protocol, Desktop Management Interface and Hypertext Transfer Protocol.

However, the Simple Network Management Protocol, Web-Based Enterprise Management Protocol, Desktop Management Interface and Hypertext Transfer Protocol are all well known network communication method, therefore, it would have been obvious at the time of the invention was made that Halliday could use any type of communications link available as long as it enabled networking of plurality of computers.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3639

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

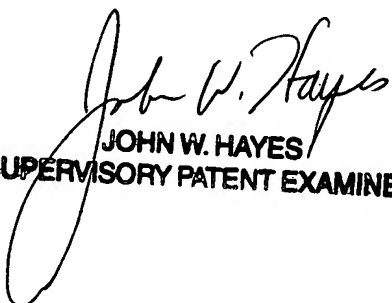
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rutao Wu whose telephone number is (571)272-3136. The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rw


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER